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NO. 839

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

STRICKLAND TRANSPORTATION CO., INC.
Appellant

Vs.

UNITED STATES OF AMERICA, et al.,
Appellees.

ON APPEAL FROM NO. CA-3-1932
IN THE UNITED STATES DISTRICT COURT
FROM THE NORTHERN DISTRICT OF TEXAS,
DALLAS DIVISION

REPLY TO MOTIONS TO AFFIRM

RALPH W. CURRIE
1011 Texas Bank Building
Dallas, Texas 75202

EWELL H. MUSE, JR.
415 Perry-Brooks Building
Austin, Texas 78701
Attorneys for Appellant

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REPLY TO MOTIONS TO AFFIRM

This Reply is to the Motions to Affirm filed herein by appellees United States of America, Interstate Commerce Commission and Central Freight Lines, Inc., et al.

As shown in appellant's Jurisdictional Statement the Commission acted on its own motion, without notice or hearing, and in a collateral proceeding, to amend appellant's certificate which was issued in 1961.

Both motions to affirm ignore the fact that (1) appellant was not afforded any hearing to enable it to argue to the Commission that the 1961 certificate did

in fact conform to the Court's mandate and (2) the Commission modified appellant's certificate without a hearing in compliance with Section 212(a) of the Act, and without discussion of the parties on the issue as to whether or not the 1961 certificate complied with the Court's mandate.

In summary, appellant has never been given any opportunity to present to the Commission its argument that the 1961 certificate does in fact comply with the Court's mandate. The Commission acted without giving appellant an opportunity to do so, thereby depriving appellant of its right to a hearing as required by Section 212(a).

Appellees apparently concede that the action of the Commission was not the correction of a clerical or ministerial error, but contend nevertheless that the Commission has the power to change a final decision consciously arrived at and to modify a final certificate without compliance with Section 212(a). This is violative of the express provisions of Section 212(a) which requires notice and hearing before such action may be taken, and is contrary to *American Trucking Associations, Inc. v. Frisco Transportation Co.*, 358 U. S. 133, and *Watson Bros. Transportation Co. v. United States*, D.C.-Neb., 132 F. Supp. 905 Aff'd., 350 U. S. 927, 76 S. Ct. 302, 100 L. Ed. 810.

Appellant prays that the Motions to Affirm filed herein by appellees be overruled and denied.

Respectfully submitted,

RALPH W. CURRIE
1011 Texas Bank Building
Dallas, Texas 75202

EWELL H. MUSE, JR.
415 Perry-Brooks Building
Austin, Texas 78701
Attorneys for Appellant

PROOF OF SERVICE

I, Ewell H. Muse, Jr., one of the attorneys for Strickland Transportation Co., Inc., Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 4th day of January, 1968, I served copies of the foregoing Reply to Motions to Affirm on the several parties hereto as follows:

(1) On the United States of America by mailing copies, in duly addressed envelopes with air mail postage prepaid to Erwin N. Griswold, Solicitor General, Department of Justice, Washington, D. C. 20530; Mr. Donald F. Turner, Assistant Attorney General, Department of Justice, Washington, D. C. 20530; Mr. Gregory B. Hovendon and Mr. Robert Eliot Easton, Attorneys, Department of Justice, Washington, D. C. 20530; and Mr. Melvin M. Diggs, United States Attorney, United States Court House, Fort Worth, Texas.

(2) On the Interstate Commerce Commission by mailing copies, in duly addressed envelopes with air mail postage prepaid, to Mr. Robert W. Ginnane, General Counsel, Interstate Commerce Commission, Washington, D. C. 20423 and to Mr. Nahum Litt, Attorney, Interstate Commerce Commission, Washington, D. C. 20423.

(3) On Central Freight Lines, Inc. and Roadway Express, Inc., by mailing copy, in a duly addressed

envelope with first class postage prepaid to Mr. Phillip Robinson, The 904 Lavaca Building, Austin, Texas 78701.

(4) On Herrin Transportation Company, Inc., by mailing copy, in a duly addressed envelope with first class postage prepaid to Mr. Leroy Hallman, 4555 First National Bank Building, Dallas, Texas 75202.

(5) On Missouri Pacific Railroad Company and Southern Pacific Company by mailing a copy, in a duly addressed envelope with first class postage prepaid, to Mr. Charles L. Ford, Jr., General Attorney, Texas Railroad Association, P. O. Box 717, Austin, Texas 78767.

EWELL H. MUSE, JR.
415 Perry-Brooks Building
Austin, Texas 78701

Attorney for Appellant